

The Texas Commission on Environmental Quality (TCEQ, agency, commission) proposes amendments to §114.680 and §114.682.

If adopted, the amendments will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the state implementation plan.

Background and Summary of the Factual Basis for the Proposed Rules

The purpose of this rulemaking is to amend existing rules implementing the Drayage Truck Incentive Program (DTIP) established under Texas Health and Safety Code (THSC), Chapter 386, Subchapter D-1.

Under THSC, §386.183(f), the commission may modify the DTIP to improve its effectiveness or further the goals of the Texas Emissions Reduction Plan (TERP). The proposed amendments to the DTIP rules are intended to improve the effectiveness of the DTIP to reduce emissions at and near seaports and rail yards in the state's nonattainment areas. The proposed amendments would include non-road cargo handling equipment as eligible for replacement under the program and would remove the requirement that the drayage truck being purchased must have a day cab only. In addition, language would be added to the definition of a seaport to include publically or privately owned property within a ship channel security district established under Texas Water Code (TWC), Chapter 68. The Houston Ship Channel Security District (HSCSD) is the only district established in Texas under this provision.

In conjunction with this proposed rulemaking, the commission also anticipates proposing changes to the guidelines developed to help implement the DTIP affected by this proposed rulemaking and the guidelines developed to help implement the Diesel Emissions Reduction Incentive (DERI) Program established under THSC, Chapter 386, Subchapter C. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. The revisions to the DTIP guidelines would incorporate changes to be consistent with the changes proposed in this rulemaking, as well as other changes. The commission anticipates making the draft guideline revisions available for public review and comment concurrent with the public comment period for this proposed rulemaking. The commission will accept oral or written comments on the proposed guideline changes at the public hearings on this proposed rulemaking.

Section by Section Discussion

§114.680, Definitions

The commission proposes to amend §114.680(1) to remove the definition term, "Day cab," under the DTIP and to replace it with the term, "Cargo handling equipment." The removal of "Day cab" is proposed because, with the proposed change to §114.682 to remove the requirement that a new drayage truck purchased under the DTIP have a day cab only, the definition would no longer be needed. The term "Cargo handling equipment" would be

added in conjunction with the proposed addition of cargo handling equipment to §114.682 as eligible for replacement and purchase under the DTIP. The proposed definition of cargo handling equipment includes any heavy-duty, non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. The equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts.

The commission proposes to amend §114.680(6) to add language to the definition of "Seaport" to include publically or privately owned property within a ship channel security district established under TWC, Chapter 68.

In the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located in proximity to, but not at, the cargo transfer locations. The HSCSD includes property where many businesses and facilities associated with port activities in some manner are located and provides an appropriate defined boundary that can be used to delineate an expanded area considered a seaport under the DTIP. The proposed addition to the definition of "Seaport" in §114.680(6) would make drayage trucks operating on or transgressing through the properties included in the HSCSD eligible for replacement under the DTIP.

§114.682, Eligible Vehicle Models

The commission proposes to amend §114.682(a)(1) to remove the requirement that a heavy-duty on-road vehicle eligible for purchase under the DTIP have a day cab only. Based on visits to many of the rail and port facilities and discussion with port administrators and drayage truck owners, the commission has determined that the goals of the DTIP could be better addressed by allowing on-road heavy-duty vehicles with sleeper cabs to be eligible for purchase under the program. The commission has determined that a number of the drayage truck owners are individual truck owners who contract to provide drayage services and that use vehicles with sleeper berths. The commission proposes to remove the day cab requirement in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

The commission also proposes to amend §114.682(a)(3) and (b)(3) to add "other cargo handling equipment" to the list of drayage truck models eligible for replacement and purchase under the DTIP. Along with the proposed addition of a definition for cargo handling equipment in §114.680, this change would expand the program to include replacement and purchase of heavy-duty non-road, self-propelled vehicles or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. As noted under the proposed definition, this equipment would include, but would not be limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. The commission has determined that expanding the program to include other cargo handling equipment at seaports and rail yards would help achieve the goals of the DTIP and the TERP by further

reducing the concentrated emissions associated with the movement of cargo at those facilities.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules. The TERP programs that are the subject of this rulemaking are voluntary and the proposed changes would impose no new requirements or responsibilities on the regulated community.

The proposed rules would revise the DTIP to help the program achieve reductions in emissions from a broader range of sources associated with the movement of cargo to and from seaports and rail yards.

The DTIP provides incentives to reduce emissions from drayage trucks operating in and around seaports and rail yards located in the state's nonattainment areas. The rules developed to implement the DTIP include criteria for the models of drayage trucks eligible for replacement and purchase under the program and definitions of seaports and rail yards.

Current rules limit the drayage trucks purchased under the DTIP to those vehicles with a day cab only (no sleeper berth). Staff has determined that much of the drayage truck traffic at the eligible facilities is by individual truck owners contracting to provide drayage services. These truck owners commonly operate vehicles with sleeper berths. Staff proposes to remove the day cab requirement to expand eligibility to include those individual contract haulers that would not otherwise participate because of that requirement.

Also, current rules limit the DTIP eligible drayage trucks to on-road heavy-duty vehicles and non-road yard trucks. Other types of non-road equipment used to move cargo, referred to as cargo handling equipment, also contribute to the concentration of emissions in and around seaports and rail yards due to the movement of cargo. Staff proposes to expand the eligibility criteria to include other cargo handling equipment in order to improve the ability of the DTIP to achieve its goals and the goals of the TERP.

In addition, based on visits to multiple seaport facilities and discussion with facility administrators and users, staff has determined that the area in which emissions from drayage trucks are concentrated is not limited to just the specific location where cargo is transferred to or from a ship or barge. Particularly in the Port of Houston area, there are multiple businesses and facilities with substantial drayage truck activity located on property and at facilities in proximity to, but not located at, the locations where cargo is loaded on or off a ship or barge. The proposed revision to the definition of a seaport would

include publically or privately owned property within a ship channel security district established under TWC, Chapter 68. Under this additional language, the property within the HSCSD, including multiple chemical facilities, warehouses, plants, and other facilities, would be considered part of the seaport for purposes of eligibility under the DTIP.

No fiscal implications are anticipated for the agency or for any other units of state or local government that own or operate affected facilities. The expansion of the eligibility requirements is not expected to impact the current level of TERP grants awarded for these programs as grant appropriations for these programs is statutorily capped. These programs are voluntary and the proposed changes would impose no new requirements or responsibilities on regulated entities. The changes to the DTIP rules will expand the eligibility for grants under the program to include other cargo handling equipment. The governmental entities operating seaports and that own and operate cargo handling equipment that would become eligible for a grant under the program could benefit if they apply for and receive a grant to replace that equipment. Port Authorities and local governments owning and operating seaports in the Houston-Galveston-Brazoria nonattainment area may benefit from additional grant funding and would include three governmental entities, the Port of Houston - Port of Houston Authority; the Port of Galveston - City of Galveston; and the Port of Freeport - City of Freeport.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated from the changes seen in the proposed rules will be improved air quality in the state's nonattainment areas, especially in and near rail yards and seaports.

The proposed rules are not anticipated to result in fiscal implications for businesses or individuals. These are voluntary grant programs open to any individual, business, governmental entity and other legal entity owning and operating eligible vehicles and equipment in the eligible areas of the state. The proposed rulemaking would expand eligibility criteria, thereby making more entities eligible to apply for a grant under the programs.

The changes to the DTIP rules would expand the types of vehicles and equipment that may be eligible for replacement under the program. The number of businesses that may benefit from this change would depend upon which businesses apply for and receive grant funding. It is not known how many businesses, including individual drayage truck owners, operate drayage trucks and equipment at the eligible seaports and rail yards.

Also, the number of businesses and facilities located within the area considered a seaport would be expanded to include those located in the HSCSD. There are 280 facilities that are part of the HSCSD representing approximately 197 businesses. To the extent these

businesses own drayage trucks and equipment eligible for replacement under the DTIP, these businesses could benefit from the proposed changes if they receive grant funding to replace some of those drayage trucks. In addition, the expansion of the eligible area considered a seaport will also benefit the additional businesses, including individual drayage truck owners, who operate at those facilities and receive grant funding.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five-year period the proposed rules are in effect for small or micro-businesses. The proposed rules impose no new requirements or regulations on small or micro-businesses and impose no new costs. It is not known how many small businesses will benefit from the proposed changes.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect and are intended to enhance the public health, safety, environmental and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rule action is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The proposed rules add or revise eligibility requirements for a voluntary grant program. Because the proposed rules place no involuntary requirements on the regulated community, the proposed rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. In addition, the amendments do not place additional financial burdens on the regulated community.

In addition, a regulatory impact analysis is not required because the proposed rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a "major environmental rule" as defined in the Texas Government Code. Texas Government Code, §2001.0225, applies only to a major environmental rule the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law. In addition, this rulemaking does not exceed an express requirement of state law and is not proposed solely under the general powers of the agency, but is specifically authorized by the provisions cited in the Statutory Authority section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the proposed rules are subject to Texas Government Code, Chapter 2007. The rules make revisions to voluntary programs and only affect motor vehicles and equipment that are not considered to be private real property. The promulgation and enforcement of the proposed rules are neither a statutory nor a constitutional taking because the proposed rules do not affect private real property. Therefore, the rules do not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this action for consistency and determined the rulemaking for Chapter 114 does not impact any CMP goals or policies, because it revises voluntary incentive grant programs and does not govern air pollution emissions.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearings

The commission will hold public hearings on this proposal in Austin on April 12, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle, and in Houston on April 14, 2016, at 6:00 p.m. in Conference Room B, at the Houston-Galveston Area Council located at 355 Timmons, Suite 120. The hearings will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearings; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Subject to the commission releasing proposed revisions to the guidelines for the DERI Program and the DTIP concurrent with the public comment period for this proposed rulemaking, the commission will also receive oral or written comments on proposed revisions to the guidelines at the same public hearings.

Persons who have special communication or other accommodation needs who are planning to attend a hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-004-114-AI. The comment period closes on April 18, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at http://www.tceq.texas.gov/rules/propose_adopt.html.

Subject to concurrent release for comment by the commission, copies of proposed revisions to the guidelines will be available from the commission's TERP website at <http://www.terpgrants.org>. The guideline documents are entitled *Texas Emissions Reduction Plan: Guidelines for the Drayage Truck Incentive Program (RG-524)* and *Texas Emissions Reduction Plan: Guidelines for Emissions Reduction Incentive Grants (RG-388)*. If the proposed guideline revisions are released for public comment concurrently with this proposed rulemaking, comments on the proposed guideline revisions may be included with comments on the proposed rulemaking or may be submitted separately. Separate electronic comments pertaining solely to the guideline revisions should reference Non-Rule Project Number 2016-011-OTH-NR and may be submitted at: <http://www1.tceq.texas.gov/rules/ecomments/>. Separate written comments pertaining solely to the guideline revisions may be submitted to Steve Dayton,

MC 204, Implementation Grants Section, Texas Commission on Environmental Quality,
P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-0077.

For further information, please contact Steve Dayton of the Implementation Grants
Section at (512) 239-6824.

SUBCHAPTER K: MOBILE SOURCE INCENTIVE PROGRAMS

DIVISION 8: DRAYAGE TRUCK INCENTIVE PROGRAM

§114.680 and §114.682

Statutory Authority

The amendments are proposed under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of the state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The amendments are also proposed under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.017, which authorizes the commission to adopt rules consistent with the policy and purposes of the THSC; THSC, §382.011, which authorizes the commission to establish the level of quality to be maintained in the state's air and to control the quality of the state's air; THSC, §382.012, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; and THSC, Chapter 386, which establishes the Texas Emissions Reduction Plan.

The proposed amendments help implement the Drayage Truck Incentive Program established under THSC, Chapter 386, Subchapter D-1.

§114.680. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used in this division have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA and §§3.2, 101.1, and 114.1 of this title (relating to Definitions), the following words and terms, when used in this division will have the following meanings, unless the context clearly indicates otherwise.

(1) Cargo handling equipment--Any heavy-duty non-road, self-propelled vehicle or equipment used at a seaport or rail yard to lift or move cargo, such as containerized, bulk, or break-bulk goods. Equipment includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, and aerial lifts. [Day cab--A drayage truck cab that does not have a compartment behind the driver's seat intended to be used by the driver for sleeping].

(2) Drayage activities--The transport of cargo, such as containerized, bulk, or break-bulk goods.

(3) Drayage truck--A heavy-duty on-road or non-road vehicle used for drayage activities and that operates on or transgresses through a seaport or rail yard for the purpose of loading, unloading, or transporting cargo, including transporting empty containers and chassis.

(4) Non-road yard truck--A non-road mobile utility vehicle used to transport cargo containers with or without chassis; also known as a utility tractor rig, yard tractor, or terminal tractor.

(5) Rail yard--A rail facility where cargo is routinely transferred from drayage truck to train or vice-versa, including structures that are devoted to receiving, handling, holding, consolidating, and loading or delivery of rail-borne cargo.

(6) Seaport--Publically or privately owned property associated with the primary movement of cargo or materials from ocean-going vessels or barges to shore or vice-versa, including structures and property devoted to receiving, handling, holding, consolidating, and loading or delivery of waterborne shipments. A seaport also includes publically or privately owned property within a ship channel security district established under Texas Water Code, Chapter 68.

§114.682. Eligible Vehicle Models.

(a) Models of drayage trucks eligible for purchase to replace an existing drayage truck under the program include:

(1) a heavy-duty on-road vehicle with a gross vehicle weight rating (GVWR) over 26,000 pounds [and having a day cab only]; [and]

(2) a non-road yard truck; and[.]

(3) other cargo handling equipment.

(b) Models of existing drayage trucks eligible for replacement under the program include:

(1) a heavy-duty on-road vehicle with a GVWR over 26,000 pounds; [and]

(2) a non-road yard truck; and[.]

(3) other cargo handling equipment.

(c) To be eligible for purchase under the program a drayage truck must have an engine of model year 2010 or later as specified by the agency in the grant solicitation materials and the drayage truck being replaced must have an engine of model year 2006 or earlier.

(d) The executive director may place additional limits on vehicle models and engine model years eligible for purchase and replacement under the program for a particular grant round in order to improve the effectiveness and further the goals of the program.